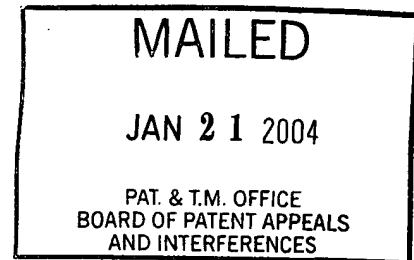


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK R. PRAUSNITZ, JIN LIU,
and THOMAS N. LEWIS



Application No. 09/229,226

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on December 18, 2003. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

According to the final rejection (Paper No. 19) filed September 13, 2002, claim 6 was rejected under § 103 over U.S. Patent No. 5,445,611 to Eppstein in view of U.S. Patent No. 5,636,632 to Bommannan and claim 26 was rejected under § 103 over U.S. Patent No. 5,636,632 to Bommannan in view of U.S. Patent No.

6,113,559 to Klopotek. A review of the examiner's answer (Paper No. 24) filed May 19, 2003, reveals that the examiner has included reference to U.S. Patent No. 6,113,559 to Klopotek in the statement of rejection to claim 6 and the statement of rejection to claim 26 was not stated (see pp. 3-6). It is not clear whether the claim 6 rejection was amended to include reference to Klopotek or the rejection to claim 26 was withdrawn. Before further review of this file, the examiner must give a clear indication of the statement of rejection to claims 6 and 26.

In addition, on July 21, 2003, appellants filed a reply brief (Paper No. 27) in response to the examiner's answer entered May 19, 2003 (Paper No. 24). However, there is no indication on the record whether or not the examiner has responded to the reply brief. Section § 1208.03 of the Manual of Patent Examining Procedure (8th ed., Aug. 2001) states:

[A]ppellant may file a reply brief as a matter of right within 2 months from the mailing date of the examiner's answer. . . . The primary must then either: (A) acknowledge receipt and entry of the reply brief by using form paragraph 12.47 on form PTOL-90; or (B) reopen prosecution to respond to the reply brief. See MPEP § 1208.02.

Accordingly, it is

ORDERED that this application be returned to the examiner for: 1) a clear indication of the statement of rejection

Application No. 09/229,226

to claims 6 and 26; 2) proper response to reply brief; and 3) for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of this appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: Frances C. Han
Frances C. Han
Program and Resource Administrator
(703) 308-9797

cc: Patrea L. Pabst
Holland & Knight LLP
Suite 2000, One Atlantic Center
1201 West Peachtree Street, N.E.
Atlanta, GA 30309-3400

FCH/tdl/mh
RA04-0177